

2005/2006 Recycling Market Development & Expansion Grant Program – Sample Grant Agreement
The Department reserves the right to make any changes to the terms of the Grant Agreement prior to the final award of the Recycling Market Development and Expansion Grant. The terms of the Grant Agreement are not negotiable.

GRANT AGREEMENT Terms and Conditions

GENERAL PROVISIONS

1. Grant Authority and Term
2. Grant Manager
3. Scope of Agreement
4. Modification - Changes
5. Subcontractors
6. Ownership of Property and Equipment
7. Stop Work Notices
8. Discretionary Termination
9. Disputes
10. Publicity and Acknowledgment
11. Copies of Data, Plans, and Specifications
12. Review and Notice of Conflicting Terms
13. Confidentiality
14. Intellectual Property Items Developed Prior to this Agreement
15. Rights of Parties Regarding Intellectual Property
16. Site Visits
17. Governing Law
18. Insurance
19. Liability Indemnification and Waiver
20. Assignment
21. Grantee Independence/Not an Agent of the Department
22. Severability/Unenforceable Provision
23. Timeliness
24. Discharge of Grant Obligations
25. Certification Clauses
26. Breach of Conditions/Remedy for Default

EXPENDITURE, PAYMENT, REPORTING, AND RECORD KEEPING PROVISIONS

27. Allowable Costs and Documentation
28. Reasonable Costs
29. Competitive Bid Requirements
30. Conflict of Interest, Self-Dealing, and Need for Arm's Length Transactions
31. Record Keeping Requirements
32. Audits
33. Payment
34. Reimbursement Limited to Net Costs
35. Invoicing
36. Travel
37. Documentation of Time Spent
38. Reports
39. Project Summary

EXHIBITS

1. Project Budget
2. Project Schedule
3. Certificate of Compliance

GRANT AGREEMENT Terms and Conditions

GENERAL PROVISIONS

1. Grant Authority and Term

(a) This Grant Agreement (hereinafter "Agreement") is between the California Department of Conservation, Division of Recycling (hereinafter "Department"), and the _____ (hereinafter referred to as "Grantee"). Hereinafter, the Department and the Grantee collectively shall be referred to as "the Parties".

(b) The Parties mutually agree and understand that this Agreement is a legally binding document, inuring to the benefit of the public, that is authorized pursuant to Section 14581 (a)(10) of the Public Resources Code (PRC). Any and all references herein to "DOR" shall also mean "Department." Any references to "contractor" herein, including references in this Agreement, in documents attached thereto, and/or in documents, statutes and regulations incorporated herein by reference, shall be deemed to be references to "Grantee."

(c) The signatories for this Agreement hereby certify that they are authorized to act on behalf of the Parties in approving this Agreement. If the Grantee is a non-profit entity, the signatory for the Grantee further certifies that the Board of Directors for the Grantee has endorsed Grantee's receipt of Grant funds pursuant to this Agreement and performance of activities and expenditure of funds in a manner consistent with the Project Summary, Project Budget at Exhibit 1, Project Schedule at Exhibit 2, and Grantee Certification of Compliance at Exhibit 3.

2. Grant Manager

_____ is the Grant Manager and the Department's representative for this Agreement.
_____ is the Grantee's representative. The Grant Manager responsibilities include monitoring Grant progress, and reviewing and approving invoices and other documents delivered to the Department pursuant to this Agreement. The Grant Manager does not have the authority to control or direct specifically how the Grantee carries out activities authorized and funded pursuant to this Agreement, but must ensure that the Grantee expends Grant funds appropriately and in a manner consistent with the terms and conditions contained herein. All official communication from the Grantee to the Division of Recycling (DOR) shall be directed to: _____, Department of Conservation, Division of Recycling, Market Research Branch, 801 K Street, 17th Floor, Sacramento, California 95814; phone: _____; fax: _____; e-mail: _____.

3. Scope of Agreement

The terms and conditions of this Agreement constitute and contain the entire Agreement and understanding between the Parties, and may not be contradicted by evidence of any prior or contemporaneous oral Agreement. The 2005-2006 Beverage Container Recycling Market Development and Expansion Grant Program Application and the Grantee's application submitted in response to the solicitation, are incorporated herein by reference. To the extent that any conflicts or inconsistencies exist between the terms and conditions of this Agreement, including the attached exhibits, and either the solicitation or the Grantee's application, the terms and conditions of this Agreement shall prevail and be controlling.

4. Modifications – Changes

No amendment or variation of the terms of this Agreement shall be valid unless made in writing and signed by both parties. Major changes to the Grant including, but not limited to, increases or decreases to the overall Grant amount and substantial revisions to the Project Summary, require formal amendment of this Agreement. Changes such as budget line item revisions of less than \$500, minor task modifications, management staff adjustments, and minor changes in the Project Summary may not require amendment of the Agreement; however, the Grantee shall obtain prior written approval from the Grant Manager before

making such changes. All requests should be submitted in writing and include a description of the proposed change and the reasons for the change.

5. Subcontractors

(a) The Grantee shall be entitled to make use of its own staff and such subcontractor(s) as are mutually acceptable to the Grantee and the Department. All subcontractor(s) specifically identified in the Project Summary are considered to be acceptable to the Department. Any change in subcontractor(s) or change as to how the Grantee intends to use the services of a subcontractor shall require either a formal amendment of this Agreement or written change order.

(b) It is understood and agreed by the Parties that the Grantee and each subcontractor shall comprise the "Grantee team." The Grantee shall manage the performance of the project and shall manage the performance of the Grantee team.

(c) In carrying out activities funded under this Agreement, the Grantee, its subcontractors and its employees shall exercise the degree of skill and care required by customarily accepted good professional practices and procedures. Any costs incurred due to failure to meet the foregoing standards, or due to otherwise defective services that cause redundancy, shall be borne by the Grantee and not the Department.

6. Ownership of Property and Equipment

The Parties agree that the Department shall hold and retain throughout the term of this Agreement rights to and interest in personal property, including equipment, purchased with funds provided through this Agreement. In the event this Agreement is terminated before full performance and completion of all activities and work authorized and funded herein, the Grantee shall, within thirty (30) days of Grantee's receipt of a written demand from the Department, surrender possession of and any rights to all such property specified in the Department's written demand. After _____, and upon the Department's determination that Grantee has complied with all terms and conditions of this Agreement and has completed all Grantee obligations reflected herein, the Department shall relinquish to the Grantee any and all rights to, and interests in, personal property, including equipment, purchased with funds provided through this Agreement.

7. Stop Work Notices

Immediately upon receiving a written notice from the Department to stop work, the Grantee shall cease all work under this Agreement.

8. Discretionary Termination

Either party shall have the right to terminate this Agreement at any time upon thirty (30) days written notice to the other. In the case of such "early" or "discretionary" termination, defined as termination occurring before full performance of all objectives and activities described in the Project Summary and authorized for funding herein, a final payment will be made to the Grantee, if due, upon receipt of a financial report and invoices covering costs incurred to termination, and a written report describing all work performed by the Grantee to date of termination. Upon discretionary termination of this Agreement and upon receipt of a written demand from the Department, Grantee also shall relinquish to the Department possession and control of any property purchased pursuant to this Agreement.

9. Disputes

In the event of a dispute, the Grantee may, in addition to any other remedies that may be available, provide written notice of the particulars of such dispute to the Assistant Director for Recycling, Department of Conservation, 801 K Street, MS 19-01, Sacramento, California 95814-3533. Such written notice must contain the Grant number. Within fifteen (15) days of receipt of such notice, the Assistant Director shall advise the Grantee of his or her findings and a recommended means of resolving the dispute.

10. Publicity and Acknowledgment

(a) The Grantee agrees that it will acknowledge the California Department of Conservation's support whenever activities or projects funded, in whole or in part, by this Agreement are publicized in any news media, brochures, articles, seminars or other type of promotional material. The Grantee shall also include in any publication resulting from work performed under this Grant an acknowledgment substantially as follows, or other language approved by the Grant Manager:

"The work upon which this publication is based was funded, in whole or in part, through a grant awarded by the California Department of Conservation."

(b) The Grantee shall place the following notice, preceding the text, on draft reports, on the final report, and on any other report or publication resulting from work performed under this Agreement:

Disclaimer

"The statements and conclusions of this report are those of the Grantee and/or Subcontractor and not necessarily those of the Department of Conservation or its employees. The Department makes no warranties, express or implied, and assumes no liability for the information contained in the succeeding text."

(c) The Grantee shall, when possible, place the Department's website address and toll free telephone number on printed educational and printed media materials relating to recycling for public distribution and use.

(d) Before any materials or other publications funded, in whole or in part, pursuant to this Agreement are published, Grantee shall provide the Department with an opportunity to review any and all references to the Department or the programs and laws that it administers in such materials and publications.

11. Copies of Data, Plans, and Specifications

The Grantee shall, at the request of the Department or as specifically directed in the Project Narrative, of the Grant Application, herein, provide the Department with copies of any data, design plans, specifications, photographs, negatives, audio and video productions, films, recordings, reports, findings, recommendations and memoranda of every description or any part thereof, prepared under this Agreement.

The State of California shall have the right to copy and distribute said copies in any manner when and where it may determine without any claim on the part of the Grantee, its vendors or subcontractors to any additional compensation.

12. Review And Notice Of Conflicting Terms

Grantee warrants and attests that it has conducted a detailed review of the terms and conditions of its existing project-related third party Agreements and has identified all known or reasonably foreseeable conflicts with this Agreement's terms and conditions and has disclosed the conflicts in writing to the Department prior to executing this Agreement. In the event further conflicts are identified, Grantee and Department agree that these conflicts shall be addressed using the procedure described in the Disputes clause. Nothing in this Agreement is intended to nullify or obviate any prior third party Agreements executed by Grantee. However, the Department is free to terminate this Agreement if the conflict impairs or diminishes the value of this Agreement.

13. Confidentiality

(a) Determination. The Department Assistant Director for Recycling makes the final determination of confidentiality. In the event there is a disagreement over the items to be delivered under the Agreement, the parties shall use the Disputes clause. Those items to be delivered as confidential shall be subject to the Department Director's determination of confidentiality. If the Grantee wishes to appeal the Assistant Director's determination, the appeal shall be made to the Department. The Grant Manager and the Grantee will identify pre-existing confidential or proprietary items to be delivered under this Agreement. The

Department agrees not to disclose those items listed in Exhibit 4 – Supporting Documents of the Grant Application determined to be confidential

(b) Public and Confidential Deliverables. Only those items specifically listed in Exhibit 4 – Supporting Documents of the Grant Application or in a subsequent determination of confidentiality qualify as confidential deliverables. All deliverables including, but not limited to, progress reports, task deliverables and the Final Report shall not contain confidential information except when the Grant Manager and the Grantee deem it necessary to include confidential information in a deliverable. In such event, the Grantee shall prepare the deliverable in two separate volumes, one for public distribution and one to be maintained in the Department’s confidential records.

(c) Future Confidential Information. The Grantee and the Department agree that during this Agreement, it is possible that the Grantee may develop additional data or information that the Grantee considers to be protectable as confidential information. Grantee must list all items and information along with justification for confidentiality and submit the information to the Grant Manager. The Department Director makes the final determination of confidentiality. Such subsequent determinations will be added to Exhibit 4 – Supporting Documents of the Grant Application.

(d) Identifying and Submitting Confidential Information. All confidential information submitted by the Grantee shall be marked “Confidential” on each document containing the confidential information and delivered in a sealed package to the Grant Manager. The confidential information will only be available to those persons authorized by the Department Director.

14. Intellectual Property Items Developed Prior To This Agreement

(a) The Department makes no claim to intellectual property that existed prior to this Agreement and was developed without Department funding.

(b) The Grantee gives notice that the items listed in Exhibit 4 – Supporting Documents of the Grant Application have been developed without Department funding and prior to the start of this Agreement. This list represents a brief description of the prior developed intellectual property. A detailed description of the intellectual property, as it exists on the effective date of this Agreement, may be necessary if Department funds are used to further develop the listed intellectual property. This information will assist the parties to make an informed decision regarding intellectual property rights.

(c) If the Grantee has not identified any pre-existing intellectual property in Exhibit 4– Supporting Documents of the Grant Application, the Grantee is estopped from making any claims in reference to pre-existing intellectual property.

15. Rights Of Parties Regarding Intellectual Property

(a) Department’s Rights in Deliverables. Deliverables and reports specified for delivery to the Department under this Agreement shall become the property of the Department. The Department may use, publish, and reproduce the deliverables and reports subject to the provisions of subparagraph c.

(b) Rights in Technical, Generated, and Deliverable Data

(1) Grantee’s Rights. All data (i.e., technical, generated and deliverable data) produced under this Agreement shall be the property of the Grantee, limited by the license retained by the Department in (2) below and the rights the Department has in deliverables specified above in (a).

(2) Department’s Rights. Grantee shall provide the Department with a copy of all technical, generated and deliverable data produced under the Agreement. Grantee does not have to copy and submit to the Department data the Grant Manager has identified as being unusable. For instance, some data may not warrant routine copying and shipping because the raw data is too disaggregated or voluminous for practical application. Retention of such data at the Grantee’s facility for inspection, review and possible copying by the Grant Manager is expected to be a more efficient use of Department staff and the Grantee’s time and efforts.

(3) For all data (technical, generated and deliverable) produced under this Agreement, the Department retains a no-cost, non-exclusive, non-transferable, irrevocable, royalty-free, worldwide, perpetual license to use, publish, translate, produce and to authorize others to produce, translate, publish and use the data, subject to the provisions of subparagraph (c).

(c) Limitations on Department Disclosure of Grantee's Confidential Records

(1) Data provided to the Department by Grantee, which data the Department has not already agreed to keep confidential and which Grantee seeks to have designated as confidential, or is the subject of a pending application for confidential designation, shall not be disclosed by the Department, unless disclosure is ordered by a court of competent jurisdiction.

(2) It is the Department's intent to use and release project results such as deliverables and data in a manner calculated to further Department objectives while protecting proprietary or patentable interests of the parties. Therefore, the Department agrees not to disclose confidential data or the contents of reports containing data considered by Grantee as confidential, without first providing a copy of the disclosure document for review and comment by Grantee. Grantee shall have no less than 10 working days for review and comment and, if appropriate, to make an application for confidential designation on some or all of the data. The Department shall consider the comments of Grantee and use professional judgment in revising the report, information or data accordingly.

(d) Exclusive Remedy. In the event the Department intends to publish or has disclosed data the Grantee considers confidential, the Grantee's exclusive remedy is a civil court action for injunctive relief. Such court action shall be filed in Sacramento County, Sacramento, California.

(e) Waiver of Consequential Damages

IN NO EVENT WILL THE DEPARTMENT BE LIABLE FOR ANY SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES BASED ON BREACH OF WARRANTY, BREACH OF CONTRACT, NEGLIGENCE, STRICT TORT, OR ANY OTHER LEGAL THEORY FOR THE DISCLOSURE OF GRANTEE'S CONFIDENTIAL RECORDS, EVEN IF THE DEPARTMENT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE. DAMAGES THAT THE DEPARTMENT WILL NOT BE RESPONSIBLE FOR INCLUDE, BUT ARE NOT LIMITED TO, LOSS OF PROFIT; LOSS OF SAVINGS OR REVENUE; LOSS OF GOODWILL; LOSS OF USE OF THE PRODUCT OR ANY ASSOCIATED EQUIPMENT; COST OF CAPITAL; COST OF ANY SUBSTITUTE EQUIPMENT, FACILITIES, OR SERVICES; DOWNTIME; THE CLAIMS OF THIRD PARTIES INCLUDING CUSTOMERS; AND INJURY TO PROPERTY.

(f) Limitations on Grantee Disclosure of Agreement Data, Information, Reports and Records

(1) Grantee will not disclose the contents of the final or any preliminary deliverable or report without first providing a copy of the disclosure document for review and comment to the Grant Manager. The Grantee shall consider the comments of the Grant Manager and use professional judgment in revising the reports, information or data accordingly.

(2) After any document submitted has become a part of the public records of the State, Grantee may, if it wishes to do so at its own expense, publish or utilize the same, but shall include the legal notice stated above.

(3) Notwithstanding the foregoing, in the event any public statement is made by the Department as to the role of Grantee or the content of any preliminary or Final Report of Grantee hereunder, Grantee may, if it believes such statement to be incorrect, state publicly what it believes is correct.

(4) Grantee will not disclose any record that is provided by the Department to Grantee for Grantee's use in executing this Agreement and which has been designated as confidential, or is the subject of a pending Application for Confidential Designation, unless disclosure is ordered by a court of

competent jurisdiction. At the election of the Grant Manager, the Grantee, its employees and any subcontractor shall execute a "Confidentiality Agreement," supplied by the Grant Manager.

(5) Grantee acknowledges that each of its officers, employees, and subcontractors who are involved in the performance of this Agreement will be informed about the restrictions contained herein and to abide by the above terms.

(g) Proprietary Data. Proprietary data owned by the Grantee shall remain with the Grantee throughout the term of this Agreement and thereafter. The extent of Department access to the same and the testimony available regarding the same shall be limited to that reasonably necessary to demonstrate, in a scientific manner to the satisfaction of scientific persons, the validity of any premise, postulate or conclusion referred to or expressed in any deliverable hereunder.

(h) Preservation of Data. Any data which is reserved to the Grantee by the express terms hereof, and pre-existing proprietary or confidential data which has been utilized to support any premise, postulate or conclusion referred to or expressed in any deliverable hereunder, shall be preserved by the Grantee at the Grantee's own expense for a period of not less than three years after receipt and approval by the Department of the Final Report herein.

(i) Destruction of Data. After the expiration of three years and before changing the form of or destroying any such data, the Grantee shall notify Department of any such contemplated action and Department may, within thirty (30) days after said notification, determine whether it desires said data to be further preserved. If Department so elects, the expense of further preserving said data shall be paid for by the Department. Grantee agrees that Department may at its own expense, have reasonable access to said data throughout the time during which said data is preserved. Grantee agrees to use its best efforts to identify competent witnesses to testify in any court of law regarding said data or, at Department's expense, to furnish such competent witnesses.

(j) Patent Rights. Patent rights for subject inventions will be the property of Grantee, subject to the Department retaining a no-cost, nonexclusive, nontransferable, irrevocable royalty-free, worldwide perpetual license to use or have practiced for or on behalf of the State of California the subject invention(s) for governmental purposes. Grantee must obtain Agreements to effectuate this clause with all persons or entities obtaining ownership interest in the patented subject invention(s). Previously documented (whether patented or unpatented under the patent laws of the United States of America or any foreign country) inventions are exempt from this provision.

(k) March-In Rights. The Grantee shall forfeit and assign to the Department, at the Department's request, all rights on a subject invention if either: 1) Grantee fails to apply for a patent on subject inventions(s) developed under this contract within six months of conceiving or first actually reducing to practice the technology or 2) Grantee or assignee has not taken, or is not expected to take within a reasonable time, effective steps to achieve practical application of the subject invention. In this event, the Grantee agrees to relinquish all rights on the subject invention to the Department. The Department will have the unfettered right to use and/or dispose of the rights in whatever manner it deems most suitable to help transfer the technology into the market place, including but not limited to, seeking patent protection, or licensing the invention.

(l) Department's Rights to Invention. Grantee and all persons and/or entities obtaining an ownership interest in subject invention(s) shall include within the specification of any United States patent application, and any patent issuing thereon covering a subject invention, the following statement:

"THIS INVENTION WAS MADE WITH STATE OF CALIFORNIA SUPPORT UNDER
CALIFORNIA DEPARTMENT OF CONSERVATION AGREEMENT NUMBER «KNUMBER».
THE DEPARTMENT HAS CERTAIN RIGHTS TO THIS INVENTION."

(m) Department's Interest in Inventions. Upon the perfecting of a patent application on any subject invention, Grantee will complete and sign a Uniform Commercial Code (UCC.1) Financing Statement and submit it to the Grant Manager for complete processing. The Grant Manager will review the UCC.1 for complete information and file the satisfactory UCC.1 with the Secretary of State's Office.

(n) Copyrights

(1) Copyrightable material first produced under this Agreement shall be owned by the Grantee, limited by the license granted to the Department in (2) below.

(2) Grantee agrees to grant the Department a royalty-free, no-cost nonexclusive, irrevocable, nontransferable worldwide, perpetual license to produce, translate, publish, use and dispose of, and to authorize others to produce, translate, publish, use and dispose of all copyrightable material first produced or composed in the performance of this Agreement.

(3) Grantee will apply copyright notices to all deliverables using the following form or such other form as may be reasonably specified by Department.

“©[YEAR OF FIRST PUBLICATION OF DELIVERABLE],
[THE COPYRIGHT HOLDER’S NAME].
ALL RIGHTS RESERVED.”

(4) Software. In the event software is developed that is not a deliverable under the Agreement, Grantee shall have the right to copyright and/or patent such software and grants the Department a royalty-free, no-cost, non-exclusive, irrevocable, non-transferable, worldwide, perpetual license to produce and use the software, its derivatives and upgrades for governmental purposes.

(o) Intellectual Property Indemnity. Grantee warrants that Grantee will not, in its supplying of the work under this Agreement’s work statement, knowingly infringe or misappropriate any intellectual property right of a third party, and that it will conduct a reasonable investigation of the intellectual property rights of third parties to avoid such infringement. Grantee will defend and indemnify Department from and against any claim, lawsuit or other proceeding, loss, cost, liability or expense (including court costs and reasonable fees of attorneys and other professionals) to the extent arising out of: (i) any third party claim that a deliverable infringes any patent, copyright, trade secret or other intellectual property right of any third party, or (ii) any third party claim arising out of the negligent or other tortious act(s) or omission(s) by the Grantee, its employees, subcontractors or agents, in connection with or related to the deliverables or the Grantee’s performance thereof under this Agreement.

16. Site Visits

The Department may conduct periodic site visits, at its own expense, to monitor progress during the Grant term. Also, interim oral or written progress reports may be required to supplement the more formal status reports.

17. Governing Law

This Agreement is governed by, and shall be interpreted in accordance with, the laws of the State of California. For the purpose of any litigation related to and/or challenging any aspect of this Agreement or performance thereunder, the locus is Sacramento, California.

18. Insurance

The Grantee shall obtain and keep in force for the term of this Agreement, and require its subcontractors to obtain and keep in force, the following insurance policies which cover any acts or omissions of the Grantee, or its employees engaged in the provision of services or performance of activities funded pursuant to and specified in this Agreement:

(a) Worker's Compensation Insurance in accordance with the statutory requirement of the State of California.

(b) Commercial general liability insurance in the amount of \$1,000,000 per occurrence and aggregate for bodily injury and property damage.

(c) Automobile liability in the amount of \$1,000,000 for each accident for owned or non-owned or hired vehicles, whichever is applicable.

The Department may make an exception if the Grant amount is less than \$10,000 and is used only to purchase equipment.

The Grantee shall name the State of California, its officers, agents, employees and servants as additional insured parties for all insurance required and is responsible for guaranteeing that a copy of each Certificate of Insurance is submitted to the Department within thirty (30) days of the execution of the Grant.

The certificate of insurance shall state a limit of liability of not less than \$1,000,000 per occurrence for bodily injury and property damage combined.

Self-insured entities must provide a copy of a Certificate of Consent to Self-Insure issued by the California Department of Industrial Relations.

The Grantee shall notify the Department prior to any insurance policy cancellation or substantial change of policy.

19. Liability Indemnification and Waiver

(a) Grantee agrees to indemnify, defend and save harmless the State, its officers, agents and employees from any and all claims and losses accruing or resulting to any and all contractors, subcontractors, suppliers, laborers, and any other person, firm or corporation furnishing or supplying work services, materials, or supplies in connection with the performance of this Agreement, and from any and all claims and losses accruing or resulting to any person, firm or corporation who may be injured or damaged by the Grantee or its contractors, subcontractors, laborers, suppliers or employees in the performance of this Agreement.

(b) The Grantee waives any and all rights to any type of express or implied indemnity or right of contribution from the State, officers, agents or employees, for any liability arising from, growing out of, or in any way connected with this Agreement.

20. Assignment

The Grantee's interest in and responsibilities under this Agreement shall not be assignable by the Grantee either in whole or in part without the written consent of the Department.

21. Grantee Independence/Not an Agent of the Department

In the performance of this Agreement, Grantee, and the agents and employees of the Grantee, shall act in an independent capacity and not as officers or employees or agents of the Department.

22. Severability/Unenforceable Provision

In the event that any provision of this Agreement is unenforceable or held to be unenforceable, it shall be severable from the remainder of the Agreement. The Parties agree that all other provisions of this Agreement shall have force and effect and not be affected thereby.

23. Timeliness

Time is of the essence in the performance of this Agreement. Grantee is required to begin implementation of this Agreement as soon as possible following its execution and shall abide by **Exhibit 2, Project Schedule**. Grantee shall not incur costs pursuant to this Agreement after _____.

24. Discharge of Grant Obligations

The Grantee's obligations under this Agreement shall be deemed discharged only upon acceptance of the final report by the Department. If the Grantee is a non-profit entity, the Grantee's Board of Directors shall accept and certify as accurate the final report prior to its submission to the Department.

25. Certification Clauses

The Grantee hereby certifies its compliance with all applicable requirements contained in **Exhibit 3, Grantee Certification of Compliance**.

26. Breach of Conditions/Remedy for Default

(a) In the event of Grantee's breach of any conditions or terms of this Agreement, the Department will give written notice to the Grantee, describing the breach. Notice shall be deemed given when deposited in the U.S. Post office, postage prepaid, addressed to Grantee, or by personal delivery to Grantee's place of business. If Grantee does not, within thirty (30) days after the notice is given, (1) cure the breach described in the Department's notice or (2) if the breach is not curable within thirty (30) days, commence to cure the breach, then Grantee shall be in default under this Agreement.

(b) In the event of a default under this Agreement, the Department shall be entitled to all remedies available at law including, but not limited to, termination of the Grant Agreement, withholding of amounts billed and/or recovery of funds disbursed and equipment purchased pursuant to the Agreement. Grantee may appeal such action by filing a dispute pursuant to Clause #9 herein.

EXPENDITURE, PAYMENT, REPORTING AND RECORD KEEPING PROVISIONS

27. Allowable Costs and Documentation

To be allowable under this Grant Agreement, costs must meet the following criteria:

- (a) Be necessary and reasonable for the performance of the Grant.
- (b) Be determined in accordance with generally accepted accounting principles.
- (c) Not be included as a cost or used to meet cost sharing or matching requirements of any other federally, state, or locally funded program in either the current or prior period.
- (d) Be adequately documented.

28. Reasonable Costs

A cost is reasonable if, in its nature or amount, it does not exceed that which would be incurred by a prudent person under the circumstances prevailing at the time the decision was made to incur the cost. Consideration will be given to:

- (a) Whether the cost is of a type generally recognized as ordinary and necessary for the performance of the Grant.
- (b) The restraints or requirements imposed by such factors as generally accepted sound business practices, arms length bargaining, federal and state laws and regulations and the terms and conditions of the Grant.
- (c) Whether the individuals concerned acted with prudence in the circumstances, considering their responsibilities to the organization, its members, employees, clients, and the public at large.
- (d) Significant deviations from the established practices of the organization that may unjustifiably increase the Grant costs.

29. Competitive Bid Requirements

Before making purchases of \$500 or more for goods (including equipment) or services authorized in **Exhibit 1, Project Budget**, Grantee shall secure at least three competitive bids or price quotes. Grantee shall purchase such goods or services from the lowest qualified bidder or pay the difference between the low bid and the one selected, without using funds obtained pursuant to this Agreement. Grantee shall maintain documentation of the competitive bid process used. This competitive bid requirement may be waived upon Grantee certification that due to the unique nature of the goods or services a sole source purchase is justified. Failure to comply with competitive bid requirements may result in the Department disallowing reimbursement of some portion or all of the related costs and/or other remedies for breach pursuant to Clause #26 above.

30. Conflict of Interest, Self-Dealing, and Need for Arm's Length Transactions

Grantee shall act in accordance with the fiduciary duty attached to the receipt and expenditure of Grant moneys intended to benefit the public. Consistent with that fiduciary duty and the public trust from which it flows, Grantee shall ensure the proper expenditure of all Grant moneys for which reimbursement is sought pursuant to this Agreement.

All expenditures for which reimbursement pursuant to this Agreement is sought shall be the result of arm's length transactions and not the result of, or motivated by, self-dealing on the part of the Grantee or any employee or agent of the Grantee. For purposes of this provision, "arm's length transactions" are those in which both parties are on equal footing and fair market forces are at play, such as when multiple vendors are invited to compete for an entity's business and the entity chooses the lowest of the resulting

bids. "Self-dealing" is involved where an individual or entity is obligated to act as a trustee or fiduciary, as when handling public funds, and chooses to act in a manner that will benefit the individual or entity, directly or indirectly, to the detriment of, and in conflict with, the public purpose for which all grant monies are to be expended.

31. Record keeping Requirements

- (a) Grantee shall establish an official file for the project. The file shall contain documentation of all actions taken regarding this Grant.
- (b) Grantee shall establish separate ledger accounts for receipt and expenditure of Grant funds and maintain expenditure detail in accordance with the approved budget detail. Separate bank accounts are not required.
- (c) Grantee shall maintain financial records in accordance with generally accepted accounting principles. Grantee shall maintain adequate supporting documentation in such detail so as to provide an audit trail of receipts, expenditures and disbursements. Grantee's records will permit tracing transactions from support documentation to the accounting records to financial reports and billings. Such documentation shall include proof of all match contributions, including identification of the source of each and every such contribution, and may include, but shall not necessarily be limited to, subsidiary ledgers, payroll records, vendor invoices, canceled checks, bank or other financial account records, consultant contracts and billings, volunteer rosters and work logs, and lease or rental agreements. Such documentation shall be readily available for inspection, review and/or audit by the Grant Manager or other representatives of the State.
- (d) Subcontractor(s) employed by the Grantee and paid with moneys under the terms of this Agreement, shall be responsible for maintaining accounting records as specified above.

32. Audits

The Grantee agrees that the State and its representatives, including, but not limited to, the Department, the State Controller's Office and the State Auditor, shall have an absolute right of access to, and right to review and copy, all of the Grantee's records pertaining to this Agreement and to conduct reviews and/or audits related to this Grant. Grantee shall, for the purpose of any such review or audit, retain and provide access to all records related to this Grant including, but not necessarily limited to, those records specified in Clause #31 above. Grantee shall also provide access to and allow interview of any employees who might reasonably have information related to such records. Such access to employees and records shall be provided during normal business hours throughout the Grant term and for at least three years after the final payment is disbursed pursuant to this Agreement, or until completion of any action and resolution of all issues which may arise as a result of any audit or review of such records, whichever is later.

33. Payment

Except as otherwise provided herein, payments shall be made to Grantee no more than once every thirty (30) calendar days in arrears for actual costs authorized in **Exhibit 1, Project Budget** of this Agreement and incurred during the Grant term. Payment will be made upon evidence of satisfactory progress, as determined by the Grant Manager. Such evidence shall consist of written status reports and other documentation evidencing performance, as provided for in this Agreement.

Final payment will be made only after completion of work and activities identified in Project Narrative of the Grant Application, including receipt of the Final Report. **The Department will not reimburse costs incurred after _____.**

Only those items identified in the Exhibit 1, Project Budget are eligible for reimbursement. Any changes to the Project Budget must be approved by the Grant Manager before expenditure for that item is made. *Under no circumstances shall the Grantee seek reimbursement pursuant to this Agreement for a cost that has been or will be paid through another funding source.*

The Department will withhold payment equal to ten percent (10%) of each invoice until completion of all work and other requirements to the satisfaction of the Department. An exception can be made only with the written approval of the DOR Branch Manager.

34. Reimbursement Limited to Net Costs

All costs charged against the Grant shall be net of all applicable credits. The term “applicable credits” refers to those receipts or reductions of expenditures that operate to offset or reduce expense items that are reimbursable under this Agreement. Applicable credits may include, but are not necessarily limited to, rebates or allowances, discounts, credits toward subsequent purchases, and refunds. Grantee shall, where possible, deduct the amount of the credit from the amount billed as reimbursement for the cost, or shall deduct the amount of the credit from the total billed under a future invoice.

35. Invoicing

An invoice must be submitted with an original and two additional copies on official letterhead listing both the Grant Agreement and invoice numbers. The original invoice must have an original signature. The invoice must contain an itemized listing of all expenditures where reimbursement is requested. For each expenditure of \$500 or more, two copies of supporting documentation (bids, receipts, canceled checks, sole source justification, etc.) are required to be submitted with each invoice. For expenditures of less than \$500, no supporting documentation is required unless requested by the Department. Original supporting documentation is not required and should be retained by the Grantee. Invoices are to be sequentially numbered.

An invoice must be signed by the person who signed the Grant Agreement or his/her designee. If there is a question as to the authority of the signer that cannot be resolved to the satisfaction of the State, the invoice will not be honored.

Each invoice is subject to approval by the Grant Manager and DOR Management, and possible audit by the Accounting Office and the State Controller before payment may be disbursed. If an invoice is questioned by the Department, the Grant Manager shall contact the Grantee within ten (10) to fifteen (15) days of receipt of the invoice, depending on business classification. Undisputed invoices take approximately six (6) weeks for payment.

Mail an original and two (2) copies of payment requests with two copies of all supporting documentation to the address listed in Clause #2. Final invoice shall be submitted no later than the termination date of this Agreement.

36. Travel

Reimbursement of travel is not permitted unless expressly provided in the approved **Exhibit 1, Project Budget**. If provided in the Grant, employees or subcontractors of the Grantee traveling from another State to the State of California or within the State of California, shall be reimbursed according to the prevailing rates for State of California employees. Travel outside the State of California will not be reimbursed without prior written authorization of the Grant Manager or unless otherwise expressly so provided in the terms of this Grant.

(a) For travel necessary to the performance of this Agreement, the Grantee shall be reimbursed as follows:

(1) Travel by common carrier, airline coach class or equivalent, in accordance with receipts or vouchers verifying expenditure.

(2) Travel by private or contractor-owned automobile at \$0.34 per mile. However, if travel by common carrier is more economical than by automobile, the rate for the common carrier will be reimbursed.

(3) Travel by private car to and from the common carrier shall be reimbursed at \$0.34 per mile.

(4) Travel by rental car, if less expensive than taxi service, in accordance with receipts verifying expenditure. Grantee will note that insurance coverage is not reimbursable.

(b) Per diem rates apply to travel more than 50 miles away from the Grantee's headquarters and are reimbursable as follows:

(1) Date and time of departure and return shall be indicated in order to establish appropriate per diem rates. Place where the travel originates and destination shall also be stated.

(2) For a full 24-hour period or for a shorter period immediately following a full 24-hour period, reimbursement may be made as follows with an accompanying receipt: lodging, actual lodging expense up to \$84 plus applicable taxes (up to \$110 plus applicable taxes in Los Angeles and San Diego Counties; up to \$140 plus applicable taxes in Alameda, San Francisco, San Mateo and Santa Clara Counties); breakfast, up to \$6; lunch, up to \$10; and dinner, up to \$18. Lodging is based on a standard, single occupant room. Travel shall begin at or prior to 6 a.m. and terminate at or after 9 a.m. to qualify for breakfast reimbursement. Lunch may be claimed if travel begins at or prior to 11 a.m. and terminates at or after 2 p.m. Dinner may be claimed if travel begins at or prior to 4 p.m. and terminates at or after 7 p.m.

(3) Incidental expenses may be reimbursed without receipts up to \$6 per 24-hour period. Expenses exceeding \$6 shall be itemized with the receipts attached to the invoice. Incidental expenses include phone calls (must identify name and number called), toll charges and parking fees, reproduction, and postage.

(4) For travel consisting of a total of fewer than 24 hours, there is no reimbursement for lunch or incidentals; reimbursement for breakfast and dinner follows the above rules.

Travel expenditures not listed herein cannot be reimbursed.

37. Documentation of Time Spent

Grantee shall maintain reports or other detailed records (e.g., activity logs or timesheets) documenting time spent by each employee, agent, contractor or volunteer whose work in support of this Agreement is billed under the Agreement or used as match. Records used to meet this requirement shall identify the individual performing the work, the date on which the work was performed, the specific Grant-related activities or objectives to which the individual's time was devoted, and the amount of time spent. Such records shall reflect actual time spent, rather than that which was planned or budgeted.

38. Reports

The Grantee shall submit to the Grant Manager status reports and a final report. Reports shall include information required in the Project Narrative of the application and shall be submitted on or before the dates specified in **Exhibit 2, Project Schedule**.

Failure to comply with the reporting requirements specified above shall constitute a breach of this Agreement and may result in the Department taking action pursuant to Clause #26 of this Agreement.

39. Project Summary

I. Parameters: This Grant shall be conducted in accordance with the following:

- A. The Grantee will [goal]. The Grantee will accomplish this by: [projects].
- B. The Grantee will conduct the project as described in Project Narrative of the Grant Application.

II. Status Reports: Status reports shall be submitted to the Grant Manager, as detailed in Exhibit 2, Project Schedule. Status reports must be adequate to show compliance with the Grant Agreement, detail all tasks performed and all identified outcomes, and justify all expenditures requested for reimbursement. The Department reserves the right to require interim verbal or written progress reports to supplement the more formal status reports to ensure compliance with the Grant Agreement and/or to support reimbursement of funds.

The first status report shall include, but is not limited to:

- A. Baseline data from which to evaluate the outcomes of the Grant projects, including, but not limited to, estimated current beverage containers recycled and, if applicable, the baseline beverage container material volume used in the manufacture of a recycled content product.
- B. A description of the methodology for collecting and evaluating data throughout the term of the Agreement.
- C. A statement of the tasks or milestones implemented to-date and a report on the status of each.

Each subsequent status report shall include, but is not limited to:

- A. A statement of the tasks or milestones implemented during the reporting period and a report on the status of each.
- B. A discussion of:
 - The recycling impacts of the project.
 - The jobs and payroll impacts of the project.
 - If applicable, additional beverage container material volume used in the manufacture of a recycled content product to-date.
 - A comparison of the actual impact, with the projected impact, described in Exhibit 3 of the Grant Application.
 - Where applicable, a comparison of the volume of beverage containers recycled and additional beverage container material volume used in the manufacture of a recycled content product, with the same data from the same reporting period the previous year.
- C. A discussion of all other benefits identified in the Grant Application, and a comparison of the actual benefits with the projected benefits.
- D. A discussion of all unanticipated problems or concerns and corrective actions taken.
- E. A statement of all data collection completed during the reporting period and findings to-date.
- F. A description of all expenditures during the reporting period.

- G. A description of all changes made to the project during the reporting period with the approval of the Grant Manager and all additional changes identified.

III. Final Report: The Grantee shall submit a draft of the final report on or before the date listed detailed in **Exhibit 2, Project Schedule**.

The Department shall draft review comments and transmit them to the Grantee within ten (10) calendar days of receipt of the draft version of the final report. After incorporation of Department requested revisions, the Grantee shall submit to the Grant Manager one camera-ready copy plus one (1) copy of the final report no later than the termination date.

This report shall include, but is not limited to:

- A. Cover Page with Disclaimer Statement
- B. Table of Contents
- C. Summary of the Project
 - The goal that was identified to be achieved through implementation of the Grant project and objectives identified to reach that goal.
 - The baseline data collected prior to implementing the program.
 - The methodology for ongoing data collection and evaluation.
- D. Total Cost of Program
 - A breakdown of actual expenditures for the project (i.e., administration, staff, equipment, operating costs, etc.) by project component and component percentage of overall project.
 - A list of all funding sources for the project, the amount provided and percentage of overall project.
 - A list and estimated dollar value of support from partnerships, volunteers, and in-kind services.
 - A statement whether funds received through this Grant were a factor in obtaining additional funding and support for the project.
- E. Implementation
 - A schedule of actual dates of project accomplishments (milestones).
 - A summary of the actual time expended on each phase of the project (i.e., planning, start-up, operation, evaluation, and until project became/becomes self-sustaining, if applicable).
 - A summary of special staffing needs.
 - A description of criteria for selecting equipment, actual effectiveness of chosen equipment, and recommended changes in equipment.
 - A statement of time elapsed before data was representative of a stable project.
 - A discussion of problems encountered and corrective actions taken.
 - A discussion of conditions unique to this project.
- F. Project Effectiveness
 - The outcomes achieved as a result of this project. This discussion must include:
 - A discussion of the actual recycling impacts of the project.
 - A discussion of the actual jobs and payroll impacts of the project.
 - If applicable, additional beverage container material volume used in the manufacture of a recycled content product.
 - A comparison of the actual with the projected impacts.

- If applicable, a comparison of the current volume of beverage containers collected and beverage container material used in the manufacture of a recycled content product with the same reporting period the previous year.
 - A discussion of all other project benefits identified in the Grant Application.
 - A discussion of expected future recycling and jobs impacts beyond the life of the grant.
 - A comparison of the outcomes achieved to the goal established at the start of the project.
 - Statistical data to support the outcomes.
 - Outside influences that may have affected the outcomes achieved.
- G. Conclusions and Recommendations
- Important findings and suggestions for improvement.
 - Tips or modifications needed for other entities to replicate project.
- H. Project Sustainability
- A list and description of on-going expenses for this project.
 - A discussion on how the on-going operational expenses will be funded after grant termination.
- I. Photographs, Articles, Diagrams, Technical Materials
- J. List of Subcontractors

Grantee acknowledges and agrees that the Department shall not release final payment pursuant to this Agreement unless and until the Department has received from the Grantee a final report that complies with the above requirements and with other applicable requirements in this Agreement.

EXHIBIT 1

Project Budget

Organization Name	Contact Name
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	First 12 Months of Grant		Second 12 Months of Grant		Third 12 Months of Grant		Total	
BUDGET CATEGORY	Grant Funds	Match Funds	Grant Funds	Match Funds	Grant Funds	Match Funds	Total Grant Funds	Total Match Funds
1. Salary and benefits by staff person								
-								
-								
-								
-								
-								
-								
-								
Subtotal								
2. Equipment by category								
-								
-								
-								
-								
Subtotal								
3. Buildings and facilities (explain)								
4. Supplies								
5. Rent and utilities								
6. Travel								
7. Contractual services (explain)								
8. Other operating costs (explain)								
9. Other non-operating costs (explain)								
10. TOTAL								

EXHIBIT 2

Project Schedule

Organization Name

Contact Name

Project Tasks and Milestones (from Workplan)	<div>June 2005</div> <div>November 2005</div> <div>May 2006</div> <div>November 2006</div> <div>May 2007</div> <div>November 2007</div> <div>May 2008</div>
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Exhibit 3, Grantee Certification Of Compliance

By signing this Agreement, Grantee certifies that it is in compliance with all of the following requirements, to the extent that each is applicable:

1. Americans with Disabilities Act

Grantee assures the State that it complies with the Americans with Disabilities Act (ADA) of 1990, which prohibits discrimination on the basis of disability, as well as all applicable regulations and guidelines issued pursuant to the ADA. (42 U.S.C. 12101 et seq.)

2. Nondiscrimination Clause

During the performance of this Agreement, the Grantee and its subcontractor(s) shall not discriminate, harass, or allow harassment against any employee or applicant for employment because of age, sex, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition (cancer), sexual orientation, marital status, and denial of family care leave. Grantee and its subcontractors shall ensure that the evaluation and treatment of their employees and applicants for employment are free from discrimination and harassment. Grantee and its subcontractors shall comply with the provisions of the California Fair Employment and Housing Act (Government Code, Section 12900 et seq.), and the regulations promulgated thereunder (California Administrative Code, Title 2, Section 7285 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990(a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated herein by reference and made a part hereof as if set forth in full.

Grantee and its subcontractor(s) shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other Agreement.

Grantee shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the Grant.

3. Recycling Certification

The Department has a procurement policy that sets purchase goals for, and favors the purchase of, products containing recycled content, both post-consumer and secondary waste. When using Grant funds to purchase recycling bins, paper products, fine printing and writing paper, plastic, glass, oil, compost and co-compost, solvents and paint, tire-derived products, and retread tires, the Grantee shall make a reasonable effort to purchase products containing recycled content. Grantee shall report any and all such purchases in status and final reports required pursuant to this Agreement.

4. Drug-Free Workplace Requirements

Grantee will comply with the requirements of the Drug-Free Workplace Act of 1990 (Government Code section 8350 et seq.) and will provide a drug-free workplace by taking the following actions:

(a) Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession or use of a controlled substance is prohibited and specifying actions to be taken against employees for violations.

(b) Establish a Drug-Free Awareness Program to inform employees about:

- (1) The dangers of drug abuse in the workplace.
- (2) The person's or organization's policy of maintaining a drug-free workplace.
- (3) Any available counseling, rehabilitation and employee assistance programs.
- (4) Penalties that may be imposed upon employees for drug abuse violations.

(c) Every employee who works on the Agreement will:

- (1) Receive a copy of the company's drug-free workplace policy statement.
- (2) Agree to abide by the terms of the company's statement as a condition of employment on the Agreement.

Failure to comply with these requirements may result in suspension of payments under the Agreement or termination of the Agreement or both and Grantee may be ineligible for award of any future State Agreements if the Department determines that the Grantee has made a false certification, or violated the certification by failing to carry out the requirements as noted above.

5. Labor Code/Workers Compensation

Grantee needs to be aware of the provisions which require every employer to be insured against liability for Worker's Compensation or to undertake self-insurance in accordance with the provisions, and Grantee agrees to comply with such provisions before commencing performance pursuant to this Agreement. (Labor Code Section 3700).

6. Child Support Compliance Act

For any Agreement in excess of \$100,000, the Grantee acknowledges accordance with the following:

- (a) The Grantee recognizes the importance of child and family support obligations and shall fully comply with all applicable state and federal laws relating to child and family support enforcement, including, but not limited to, disclosure of information and compliance with earnings assignment orders, as provided in Chapter 8 (commencing with section 5200) of Part 5 of Division 9 of the Family Code.
- (b) The Grantee, to the best of its knowledge, is fully complying with the earnings assignment orders of all employees and is providing the names of all new employees to the New Hire Registry maintained by the California Employment Development Department.

7. Resolution of Support

A county, city, district, or other local public body must provide the State with a copy of a resolution, order, motion, or ordinance of the local governing body which by law has authority to enter into an Agreement, authorizing execution of an Agreement.

8. Air or Water Pollution Violation

Under State laws, the Grantee shall not be: (1) in violation of any order or resolution not subject to review promulgated by the State Air Resources Board or an air pollution control district; (2) subject to a cease and desist order not subject to review issued pursuant to Section 13301 of the Water Code for violation of waste discharge requirements or discharge prohibitions; or (3) finally determined to be in violation of provisions of federal law relating to air or water pollution.

9. Compliance with Other Laws, Including CEQA

The Grantee shall comply fully with all applicable federal, state and local laws, ordinances, regulations and permits and shall secure any new permits required by authorities having jurisdiction over the project(s), and maintain all presently required permits. The Grantee shall ensure that any applicable requirements of the California Environmental Quality Act are met in carrying out the terms of the Grant.

10. Use of State Funds to Assist, Promote or Deter Union Organizing

Grantee shall not use state funds, including Grant funds, to assist, promote or deter union organizing. Government Code Section 16645.1(c) provides that Grantee shall be liable to the State for the amount of any funds expended in violation of this prohibition, plus a civil penalty equal to twice the amount of those funds. If Grantee makes expenditures to assist, promote or deter union organizing, Grantee shall maintain

records sufficient to show that state funds have not been used for those expenditures. The Grantee shall provide those records to the Attorney General upon request.

11. Payee Data Record Form (Std. 204)

This form must be completed by all contractors and Grantees that are not another state agency or governmental entity.

12. Corporate Qualifications To Do Business in California

- (a) When agreements are to be performed in the state by corporations, the contracting agencies will be verifying that the contractor is currently qualified to do business in California in order to ensure that all obligations due to the state are fulfilled.
- (b) "Doing business" is defined in R&TC Section 23101 as actively engaging in any transaction for the purpose of financial or pecuniary gain or profit. Although there are some statutory exceptions to taxation, rarely will a corporate contractor performing within the state shall not be subject to the franchise tax.
- (c) Both domestic and foreign corporations (those incorporated outside of California) must be in good standing in order to be qualified to do business in California. Agencies will determine whether a corporation is in good standing by calling the Secretary of State.

13. Contractor Name Change

An amendment is required to change the Grantee's name as listed on this Agreement. Upon receipt of legal documentation of the name change the State will process the amendment. Payment of invoices presented with a new name cannot be paid prior to approval of said amendment.

14. Conflict Of Interest

Grantee needs to be aware of the following provisions regarding current or former state employees. If Grantee has any questions on the status of any person rendering services or involved with the Agreement, the awarding of agency must be contacted immediately for clarification.

Current State Employees (PCC 1040):

- (1) No officer or employee shall engage in any employment, activity or enterprise from which the officer or employee receives compensation or has a financial interest and which is sponsored or funded by any state agency, unless the employment, activity or enterprise is required as a condition of regular state employment.
- (2) No officer or employee shall contract on his or her own behalf as an independent contractor with any state agency to provide goods or services.

Former State Employees (PCC 10411):

- (1) For the two-year period from the date he or she left state employment, no former state officer or employee may enter into a contract in which he or she engaged in any of the negotiations, transactions, planning, arrangements or any part of the decision-making process relevant to the contract while employed in any capacity by any state agency.
- (2) For the twelve-month period from the date he or she left state employment, no former state officer or employee may enter into a contract with any state agency if he or she was employed by that state agency in a policy-making position in the same general subject area as the proposed contract within the 12-month period prior to his or her leaving state service.

If Grantee violates any provisions of above paragraphs, such action by the Grantee shall render this Agreement void. (PCC 10420).

Members of boards and commissions are exempt from this section if they do not receive payment other than payment of each meeting of the board or commission, payment for preparatory time and payment for per diem. (PCC 10430(e)).